

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM K. DUFFY, et al.,

Plaintiffs,

-against-

EAST PORT EXCAVATION & UTILITIES
CONTRACTORS, INC., et al.,

Defendants.

**REPORT AND
RECOMMENDATION**
CV 07-217(DRH)(ARL)

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LINDSAY, Magistrate Judge:

Before the court is plaintiffs' motion seeking to strike answers filed by defendants East Port Excavation & Utilities Contractors, Inc. ("East Port Excavation") and Eastport Manor Construction, Inc. ("Eastport Manor"). By order dated November 18, 2009, the undersigned granted East Port Excavation and Eastport Manor's counsel's motion to withdraw. (*See* Docket Entry 31.) East Port Excavation and Eastport Manor were warned that they may not appear pro se, and that their failure to retain new counsel may result in the entry of a default judgment pursuant to Federal Rule of Civil Procedure 55. *See Grace v. Bank Leumi Trust Co. of NY*, 443 F.3d 180, 192 (2d Cir. 2006). The defendants' new counsel were therefore ordered to file a notice of appearance within thirty days. This deadline has elapsed and no counsel has appeared on the defendants' behalf. In fact, although East Port Excavation and Eastport Manor were each served with both the court's November 18th order and plaintiffs' most-recent letter application, neither defendant has responded.

In light of the previous warnings about the entry of a default judgment and the defendants' failure to respond, plaintiffs' motion is granted. The undersigned respectfully recommends that the district court strike East Port Excavation and Eastport Manor's answers. Plaintiffs' counsel shall serve a copy of this order upon East Port Excavation and Eastport Manor at their last-known addresses via certified mail and shall file proof of service with the court. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 14 days of service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
January 15, 2010

/s
ARLENE ROSARIO LINDSAY
United States Magistrate Judge